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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 172

THE TEXAS COMPANY,

Petitioner,

v.

United States of America as Owner of the USS RUCHAMKIN and Ten Other Naval Vessels of the United States; and Evelyn Eckert, Administratrix of the Estate of Edward James Eckert, Jr., Deceased, et al.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

REPLY BRIEF OF THE PETITIONER THE TEXAS COMPANY

JOSEPH M. BRUSH,
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I. DO U.S NAVAL FORMATIONS HAVE A SPECIAL NAVIGATIONAL STATUS ON THE HIGH SEAS

The second, third and fourth questions presented in the Government's Brief in Opposition, although not enumerated in the petition itself, clearly demonstrate, we submit, the serious error committed by the court below. There are

three very important fallacies in these questions or bases of fault urged by the government and cited by the Court of Appeals when it held the WASHINGTON to blame for the violation of alleged legal duties with respect to vessels with which she did not collide. Those fallacies were recognized by the District Court.

FIRST. Although claiming privilege under the Starboard Hand Rule the Tactical Commanders treated the meeting between the tanker and the formation as one of Special Circumstances.

Ten minutes before the collision every naval vessel in the task group was ordered to and did slow down (their speed was reduced twice) *in order to allow the* WASHINGTON *to pass ahead of all the heavy vessels in the formation.* Those reductions of speed, executed ten minutes before the collision created a Special Circumstances situation between the formation and the tanker even if none had earlier existed. The government's brief attempts to confuse the relationship between the tanker and the formation (wherein there was no collision) with the situation between the tanker and the RUCHAMKIN. As between the colliding vessels a situation of special circumstances was created by the position of the RUCHAMKIN, completely hidden as it was from the WASHINGTON. *Lind* v. *United States* (2 Cir. 1946), 156 F. 2d 231, 233.

After the right of way had been granted to the WASHINGTON, the Screen Commander (as the District Judge found) made the grievous error of deliberately ordering the RUCHAMKIN up across the WASHINGTON's course at high speed when all other vessels were slowing down to allow the WASHINGTON to pass ahead. That order was grossly negligent, and as the District Court found, it violated the Special Circumstances and General Prudential Rules of the Road. The trial court held this negligent act was "so plainly perilous" that it was sufficient to account for the collision.

SECOND. A naval formation is not a unit under the Rules of the Road. The Starboard Hand Rule by its own verbiage applies to two vessels, not to a single vessel on one hand and a formation on the other.

"When two steam vessels are crossing, so as to involve risk of collision, the vessel which has the other on her own starboard shall keep out of the way of the other." (Aug. 19, 1890, c. 802, Sec. 1, 26 Stat. 327.) 33 U.S.C. 104.

A "vessel" we assume means *a* vessel, not a group or formation of self propelled vessels. By its terms that rule also requires "risk of collision" to exist before the rule comes into play. Risk of Collision is defined by the Rules:

"§101. Suggestion for ascertainment of risk of collision. Risk of collision can, when circumstances permit, be ascertained by carefully watching the compass bearing of an approaching vessel. If the bearing does not appreciably change, such risk should be deemed to exist." (Aug. 19, 1890, c. 802, sec. 1, 26 Stat. 326.) 33 U.S.C. 101.

In other words, a vessel navigating the high seas does not have to run away from every navigation light visible to her starboard much less from every naval vessel or formation thereof. In this case the WASHINGTON was enveloped by the naval formation before the rules required her to avoid any light.

The District Court found:

"also, because of the eastwardly receding curve of the southerly end of the screen are, the tanker was not in a situation involving risk of collision with the flotilla until she was beyond the path of the southernmost ship of the screen, the CORRY, hence the tanker did not have the choice of skirting the flotilla. At all events neither

of the two left wing or southern vessels of the screen (the CORRY and the LLOYD) ever tendered collision * * *."

Further, assuming for argument sake that the Starboard Hand Rule did in fact apply to any of the naval vessels (other than the RUCHAMKIN) the WASHINGTON did not collide with them, consequently there was no violation of the Starboard Hand Rule. (*Palzgraf* v. *Long Island R.R. Co.*, 248 N. Y. 339, *Diamond State Tel. Co.* v. *Atlantic Refining Co.*, (3 Cir. 1953) 205 F. 2d 402.

THIRD. The navigation of naval vessels is governed by the Rules of the Road. Except for a self-serving definition of "Sea Manners" promulgated by the United States Navy in a war-time regulation, (See Government Ex. 5), there is no rule of law that gives a United States Naval formation a special status on the high seas. Rather than demanding privilege where none exists prudent commanders realize that if they want to preempt some twelve to fifteen square miles of ocean they had best send out pickets (as army convoys on the highways are careful to do) or else this "supership" of a formation had best maneuver so as not to envelop unwarned merchantmen.[1] Commodore Smith testified that the higher echelon of the Navy recognized this and found no better way to avoid collision:

"Q. I don't mean to, just to restrict you to Admiral Lanning.

A. It became principle, and it was one of the most difficult ones to arrive at, that a formation proceeding at sea with lights on, encountering a merchant vessel, should attempt to avoid the vessel regardless of rules

1. There was no effective warning to the WASHINGTON as she approached the formation. There were no picket vessels or any effective visual or radio warning. The only attempt to communicate with the tanker was by flashing light at a time *after* she had passed ahead of the FREMONT and that was for the sole purpose of reprimanding the WASHINGTON. (Pet. p. 39)

of the road priorities and—now you must understand that all officers in Tactical Command would not agree with this, but this did become the established practice, and to my knowledge by those who were experienced at that time, was the best practice.

Q. Now—excuse me.

A. You would try to avoid. There were many arguments concerning this and every new officer assigned to take Tactical Commands, not having one before, when that was told him, would raise the objection about, Well, that will confuse the approaching ship, and the answer to that is that if the action is taken at the first opportunity and you see the ship where you see some distance away, considerable distance away, it will not confuse him, but to let the ship, the merchant ship, who does not know that he is approaching a formation under one command, to whom it looks—and I have seen them, like a little fishing vessel here and fishing vessel there, and another one over here, and Atlantic City in the middle of it, if it's a big formation well lighted up—it just seems to be a thing not contemplated nor could it be contemplated by the rules of the road because the formations are so different.

Then, so the answer to that objecting O.B.C., would be, if you do not or cannot move, change the course and speed of your formation because you think you should not, and you have the right-of-way by, according to—you are the privileged ships at that moment by rules of the road, then you should notify the stranger what you are—at least give him warning of what he is heading into, and thus help him avoid that. Then when they objected to that, or raised objections to it, the answer would come right back to it, if you know of a better way of doing it than avoiding it, you will have to tell me, and there were none that, speaking generally, could ever advance a better method of avoiding collisions at sea with approaching vessels." (Trial Minutes, pp. 625, 626.)

Like all other vessels, United States Naval vessels are and should be governed by the International Rules of the Road while navigating on the high seas. Some years ago the English Navy also attempted to grant its formations special privilege and status on the high seas in a similar self-serving definition of Sea Manners. But that declaration was declared violative of the International Rules of the Road and was frowned upon by the British courts. The H.M.S. King Alfred 1913 Prob. Div. 102, 30 Times LR 102, The Dominion Monarch 71 LL. L Rep 110, The F. S. Wolfe, 78 LL. L Rep 486, THE SCOTTISH MUSICIAN 72 LL. L Rep 284.

Although questions 2, 3 and 4 presented by the Government's Brief in Opposition were not included in the petition, the petitioner respectfully urges that this court pass upon the legality of the privileged status granted to U.S. Naval formations by the court below, since if that decision is allowed to stand U.S. Naval formations will have a special navigational status denied the British Navy under a similar declaration of manners.

II. IN REM LIABILITY

The Government's version of the "First Question Presented" by the petition herein, attempts to separate the negligent Tactical Commanders from their flagships FREMONT and HOLLIS. These negligent naval officers are referred to in the Government's Brief (p. 2) as "riding as a passenger aboard it, * * * neither a member of its crew nor responsible for its navigation * * *". This characterization is in shocking disregard of (a) the Government's own Naval Regulations, (b) the uncontradicted testimony of one of the Navy's distinguished retired officers and (c) the other evidence in the case.

The Tactical Commanders were no more passengers than were the commanding officers on board those naval vessels. Webster defines a passenger as "a passer through

or passer by, wayfarer, traveler" also as "a member of a racing crew whose weight retards the boat more than its power adds to its speed; hence an inefficient member of the team (sporting slang)".

Navy Regulations spell out the duties of Tactical Commanders and under the heading "Responsibility and Authority of a Commander" Sec. 0502, sub. 1, provides:

> "1. A commander shall be responsible for the satisfactory accomplishment of the mission and duties assigned to his command. His authority shall be commensurate with his responsibilities, subject to law and these regulations."

Section 0512 thereof further states that—

> "in matters of general discipline, the staff of a commander embarked * * * shall be subject to the internal regulations and routine of the ship. They shall be assigned regular stations for battle and emergencies. Enlisted persons serving with the staff shall be assigned to the ship for administration and discipline, except in the case of staffs embarked for passage only * * *".

This section recognizes that there may be staffs which are "embarked for passage only" but such was not the fact in this case.

These flag officers may not have been a part of the permanent ship's company of the FREMONT or the HOLLIS on other occasions when those vessels were not flagships, but for the purposes of the voyage out of which this litigation arose, they were certainly included in Benedict's definition of "mariners" as that term is used in defining a vessel's crew under the admiralty law:

> "The term mariner includes all persons employed on board ships and vessels, during the voyage, to assist in their navigation and preservation or to promote the

purposes of the voyage. Masters, mates, sailors, surveyors, carpenters, coopers, stewards, cooks, cabin boys, engineers, pilots, firemen, deck hands, wireless telegraph operators, waiters,—women as well as men,—are mariners." Benedict on Admiralty (Vol. 1, p. 243).

The evidence demonstrates that these negligent tactical officers were responsible for and controlled the navigation of their flagships. See also Admiral Nimitz's article Petition, p. 18. Within the 20 minutes preceding the collision the FREMONT obeyed the orders of the O.T.C. four times and the HOLLIS obeyed the orders of the Screen Commander three times. This was entirely in accord with the provisions of Sections 0502 (1), 1345 and 0751 (o) of the U.S. Navy regulations.

Commodore Oscar Smith, a retired naval officer whose testimony is absolutely uncontradicted in this respect, outlined in detail the responsibilities of the commanding officer of a vessel and of his senior the Tactical Commander. He pointed out that when a vessel operates independently, its commanding officer is in full charge of its navigation; that as soon as that vessel reports to a tactical senior, the responsibility is shared by the vessel's commanding officer with such senior. Commodore Smith described this as follows:

"Now the Screen Commander also has tactical command of that ship. It looks like dual authority. Actually it isn't. The Tactical Command of the captain, when he is operating in a screen or in and—under another Tactical [617] Commander is merely restricted to the movements of his ship and screen guide movements are handed down to him by the senior officer who will tell him ship's right, ship speed 15, take formation X, but the captain issues the order to the wheel on his own ship in order to accomplish these things, or the orders to the engine". Govt. App. p. 141a.

As to this control by the Tactical Commander, section 0751 (o) of the U.S. Navy Regulations provides:

> "When under the tactical command of a senior, [a vessel's commanding officer shall] perform no independent evolution without orders from such senior, except as necessary to avoid collision or imminent danger."

Thus for the HOLLIS and the FREMONT, the ship's captain would "issue the orders to the wheel to accomplish" the orders of the senior—but the captain of each of these vessels knew that he was controlled in its navigation by the tactical seniors. (Trial minutes p. 618)

The attempt of the Government to separate the negligent flag officers from the vessels which the Navy had furnished them to carry out their assigned duties, for which they were responsible under Navy Regulations and from and through which all of their orders emanated, ignores the uncontradicted evidence and the applicable rules defining their duties, responsibilities and authority.

The Government admits that it is liable for the negligence of the flag officers that contributed to the collision herein and also to liability in rem for the negligence of government personnel in the operation of any naval vessel here involved "if the negligence constituted personal acts of the ship for which, as a juristic person, she is legally responsible." (Government Brief, pp. 11, 12) It contends however that its FREMONT and HOLLIS should not be held liable in rem because the flag officers were merely "riding" as "passengers". It is doubtful if the flag officers themselves would characterize themselves as "riders" or "passengers". They never testified that they were, and it would be very surprising indeed if the U. S. Navy would permit "passengers" to take a task group sixty miles to sea and back or if hundreds of naval personnel on the vessels comprising this task group would have slowed their vessels or performed the maneuvers on this occasion on

instructions or orders of "passengers". In fact the U.S. Navy Regulations prescribe with respect to these "passengers" that:

> "The senior officer present is responsible for the safety of the units in company, and shall, at sea, direct the course to be steered and the disposition to be employed." Sec. 0611 (2)

The positon of the flag officers on board their respective flag ships herein was closely analogous to that of the compulsory pilot in the CHINA, 7 Wall 53. The flag officer is just as necessary for the proper operation of the intricate naval maneuver as the pilot is to aid the captain in navigating his ship in unfamiliar and restricted waters. In either case the captain has the same right and duty to intervene to protect the safety of his vessel from imminent danger as to which either the pilot or the flag officer fails to take proper or timely action. Since this court has held that the fault of a compulsory pilot renders the merchantman on which he is stationed liable in rem, it is contrary to reason not to impose the same liability on a naval vessel for the negligence of her flag officers.

The relationship of a pilot to his vessel is defined by Griffin on Collision:

> "His services 'are as much for the benefit of the vessel and cargo as those of the captain and crew. His compensation comes from the same source as theirs. Like them, he serves the owner and is paid by the owner' (the CHINA, 7 Wall. [74 U.S.] 53, 67 [1869]; cf. *Workman* v. *New York City*, 179 U.S. 552 [1900]).
>
> "If the ship is negligently navigated, in obedience to a wrong order of the pilot, not only is her owner responsible for a resulting collision, but the vessel is liable 'as the offending res' (the MAREN LEE, C.C.A. 2, 278 Fed. 918 [1922]). This accords with the general principle that liability in rem arises against a vessel which is navigated negligently by a person lawfully in

charge of her. Hough, J., in the EDWARD G. MURRAY, C.C.A. 2, 278 Fed. 895 [1922]:"

The English cases relied upon by the Government are not controlling because they apply the British law which "does not adopt the theory of personification of the vessel." (Griffin on Collision, p. 447)

The case of *Publicover* v. *Alcoa S.S. Co.*, 168 F2d, 672, involves the responsibility of a private shipmaster upon whom purely military duties respecting other vessels were imposed. In the case at bar the flag officers were charged with full navigational control as well as military responsibility for the other naval vessels in company. This distinction apparently satisfied the Court of Appeals for the Second Circuit, for within two years after deciding the "Publicover" case, supra, it was presented with the "Australia Star-Hindoo", involving facts analogous to the instant case. It did not hesitate to enforce in rem liability. If the "Publicover" is in fact in point in an all-Navy case such as this, then the "Australia Star" and "Canadian Aviator" decisions must be reversed.

There is, we submit, no valid distinction between the misguidance of the Cavelier in *Canadian Aviator Ltd.* v. *United States*, 324 U.S. 215 (1946) and the Screen Commander's misguidance of the RUCHAMKIN, or between the failure properly to guide the HINDOO and warn the AUSTRALIA STAR in *U.S.* v. *The Australia Star* (2 Cir.) 172 F. 2nd 472, and the failure of the FREMONT properly to guide the RUCHAMKIN. The duty to care for the RUCHAMKIN in each case (FREMONT and HOLLIS) was crystal clear. The commander of the unfortunate RUCHAMKIN relied upon this duty as he raced across the course of the WASHINGTON intently watching the FREMONT and the HOLLIS and listening for orders emanating from those vessels. He testified he would have turned around and run the other way had he known the WASHINGTON was there. (Trial M. p. 471) If in rem liability is not to be imposed then this court should explain the distinction between a compulsory pilot and a compulsory flag officer because in the evidence there was none.

III. SCOPE OF REVIEW BELOW

The Petition for Certiorari listed twelve occasions in which the Court of Appeals reversed factual findings of the District Court, Pet. pp. 23-25. These reversals are admitted and it is conceded that the law requires an appellate court to determine that the trial court's findings were "clearly erroneous" before the Appellate Court can reverse such findings. It is claimed, however, that these are not really new findings—but only different findings, based upon "other" facts found by the District Court.

In its Brief in Opposition, the Government has stated that the Appellate Court:

> "* * * did not merely substitute its own view of the facts for that of the District Court. Rather, it held that the conclusions drawn by the District Court from findings as to what the WASHINGTON saw, or should have seen, could not be reconciled with its findings as a whole." (P. 19-20)

The bald fact is, however, that for the Court of Appeals to reverse the District Court, it had to embrace the testimony of the tanker's litiguous lookout and to disregard the testimony in open court of her mate and of every naval officer who was questioned concerning the appearance of the lights on this particular night. The overwhelming weight of the evidence was that the lights of the RUCHAMKIN were not distinguishable from the bridge of the tanker until it was too late to avoid a collision. *Only* Upton claims to have identified the lights of the RUCHAMKIN.

Upton testified that he saw and reported (by a bell from the forecastle) the lights of the RUCHAMKIN some 15 minutes before the collision (Gov't. Brief in Opposition p. 5). At this time the RUCHAMKIN was over seven miles away and was separated from the tanker by the entire

naval formation as to which Captain Jackson of the RUCHAMKIN testified.

> "I saw a great many lights * * * from the ships in the main body, which included cargo lights, porthole lights and mast lights or what have you from the formation * * * you must realize that there were several other ships in the immediate vicinity all of which were showing their lights. Also you must remember that the ship we now know to be the CAPRICORNUS was for a considerable period of time between me and the WASHINGTON. * * *"

> "Also that these all of these ships that I was passing, as I passed them were showing similar lights to the WASHINGTON. Also that there were a great many lights over there and to pick out any one individual set of lights particularly when you didn't know that there was a stranger there, would have been most difficult." (Government's Appendix 302a, 304a).

Upton refused to appear and testify upon the trial. His Coast Guard testimony was introduced in his absence. Unfortunately other conflicting testimony in his examination before trial in his personal injury suit could not be offered since that suit was not tried. The Court below will have the dubious pleasure of reconciling his conflicting testimony with the balance of the evidence on this subject when his pending personal injury suit is tried at some future date.

The Government's brief and particularly its questions nos. 2, 3 and 4 assume the facts *as known by the naval officers* but not as they appeared to an on-coming, uninformed merchantman at two o'clock in the morning. The forty copies of the Notices to Mariners mentioned in the Government's Brief, p. 4, were mailed while the WASHINGTON was at sea. They referred to amphibious landings on shore at a point that did not appear on the chart referred

to in the notice, and which was over 50 miles away from the point of collision. Had the tanker received the notice, and had the notice accurately described where the Task Group would be, the evidence nevertheless established that the formation was not where the notice said it would be.

Furthermore, the lights of this formation were only a part of a series of many lights visible on the horizon to the mate of the tanker. There was nothing about the lights that disclosed that they were operating as a coordinated unit. They were of no distinctive color, and from the level from which they were seen by the mate on the bridge of the tanker, they assumed no particular pattern. They were described as looking like a village and were merely a portion of the total number of lights which were visible to any merchant ship, domestic or foreign steaming up the coast. It is significant in this regard that the District Court considered this testimony together with the exhibit introduced in evidence by The Texas Company, as to the appearance of these lights this night, whereas the Chief Judge of the Court of Appeals, who wrote its opinion, refused to view the exhibit which was in evidence before the District Court. (Texas Exhibit 17)

In the Brief in Opposition filed by the death claimants, the sole point is whether the Court of Appeals exercised the proper scope of judicial review. Here we find the same reliance upon the testimony of the lookout Upton as was present in the Government brief. The death claimants, however, also rely upon a diagram in their brief below which depicts the vessels as seen from the air in daylight and which ignores the only basis that the tanker's mate had in navigating his vessel—the appearance of lights at sea at night on a horizontal plane.

The Circuit Court of Appeals substituted its own experience in seamanship for that of the licensed personnel present, and reversed the well supported findings of the District Court that neither the WASHINGTON nor RUCHAMKIN should be faulted for the action taken by them to avoid

collision when they became visible to each other. The District Court found that when the two colliding vessels more or less simultaneously sighted one another (at a distance of about one thousand yards and approaching at a relative speed of some thirty knots) there was no time for any different evasive action than that which the two shipmasters attempted. No evidence was cited by the Court below to support this reversal of fact of the District Court.

This review by the Court below is in sharp contrast to the appellate review of a similar factual situation by the Court of Appeals for the Second Circuit in the Seawind, 242 F. 2d 368 (1957) where the court said at page 369:

> "The trial judge concluded that at the time the light became visible to those aboard the SEAWIND she was already in extremis and the sounding of the single blast could not be taken as a fault in such an emergency. * * * In any event the SEAWIND did not stop her engines and the trial judge found in substance that this again was a matter of judgment and he said that his own 'predisposition' was that 'she could keep her way, which was not very great, to avoid the set of the wind and the tide.'
>
> "We cannot say that these findings are clearly erroneous. *McAllister* v. *United States*, 348 U.S. 19, 75 Supreme Court 6, 99 Law Ed. 20; *United States* v. *United States Gypsum Co.*, 333 U.S. 364, 68 Supreme Court 525, 92 Law Ed. 746."

The death claimants unable to find any comfort respecting the *McAllister* case in the opinion of the Court of Appeals, assert that the learned court below "stated orally upon the argument" that it would not reverse unless the District Court's opinions were "clearly erroneous". Petitioner's counsel has no recollection of any such oral statement by the Appellate Court.

The most than can be said for the scope of review used by the court below is that that court evidently felt that the case should have been decided differently than the

District Court. This is not a sufficient basis for reversal. *McAllister* v. *United States*, *supra*, and *Lavender* v. *Kurn*, 327 U.S. 645, 653.

CONCLUSION

It is submitted that the petition and reply brief have demonstrated that the opinion of the Court of Appeals (a) disregarded the scope of review prescribed by this court; (b) that it is in conflict with a decision of this court and of the Courts of Appeals with respect to in rem liability; (c) that it affords a special navigational status to U.S. Naval formations; (d) that it imposes liability for alleged navigational errors with respect to vessels which did not collide (contrary to the opinion of the Courts of Appeals for the Second and Third Circuits in the *Steel Inventor*, C.C.A. 2d 1939, 43 F 2d 958 and *Diamond State Telegraph Co.* v. *Atlantic Refinery Co.* (3 Cir.) 205 F 2d 402). Certiorari should accordingly be granted.

Respectfully submitted,

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APPENDIX TO REPLY BRIEF

COMMODORE OSCAR SMITH, a Naval Officer of considerable experience, testified with respect to the responsibility and authority of the flag officers as follows: (Trial M. 615)

"Q. Now, Commodore, in this case, there has been testimony that these vessels and certain other vessels were all a part of a Task Group which has been designated as eighty-six point two under the command of an officer whose flagship was aboard—whose flagship was the USS FREMONT. His name was Captain Day. Captain Day has also been referred to as the O.T.C. or Officer in Tactical Command. Additionally, we are told that there is a screen commander, and, of course, there are commanding officers of the various individual ships. Now would you outline briefly for us the authority and responsibilities that those various jobs or officers hold?

A. The Group Commander, the Task Group Commander is the officer who commands the entire formation. He probably—I don't know whether he did in this case or not—but he probably wrote the Operation Order. He could have an Operation Order. I do not know that any such orders in [616] existence in this individual case you mentioned, but he could have written an Operation Order and if it were a large, important operation he would have done so.

Then in that order he would have detailed these—he had the power, he had the command authority—to delegate the duty of command of the main body to one officer. Normally he would assign that to himself or retain it in his own hand. He would delegate the authority to command the screen and control its tactics to the senior officer of the ships in the screen, and he would be designated Screen Commander.

Now the individual ship. I am going to start from the bottom and work up as regards the Tactical Command. The individual ships which comprise these various ships have on board a Commanding Officer, who is the Tactical Commander of that ship at all times. By that I mean that he uses the facilities granted him by the Navy Department that are placed on that ship to navigate it, make it stop, to make it speed up, to make smoke, do any simple thing necessary for it to behave and do the tasks to which, are assigned to it. But he has over him the Screen—I am assuming it will take a screening vessel—he would have over him a Screen Commander.

Now the Screen Commander also has tactical command over that ship. It looks like dual authority. Actually it isn't. The Tactical Command of the captain, when he is operating in a screen or in an—under another Tactical [617] Commander is merely restricted to the movements of his ship and screen guide movements are handed down to him by the senior officer who will tell him ships right, ship speed fifteen, take formation X, but the captain issues the order to the wheel on his own ship in order to accomplish these things, or the orders to the engine.

Similarly, over the Screen Commander you have the Officer in Tactical Command—designation I believe was originated because of the necessities of a formation having an officer specifically designated to have all authority over everything in that screen that dealt with the operations as distinct with the administrative functions, because frequently there will be a senior officer traveling in the formation who may have the, might be the Chief of Naval Operations—actually if the Chief of Naval Operations wished to he could relieve all of those people from their commands and take over, but of course, he probably wouldn't, but, so they designate this man as officer in Tactical Command and he is charged with the responsibility over those.

So now we have a triple authority over the ship, but by having delegated his authority over the screen to the Screen Commander, you end up only with three. However, this does not change his authority to step in at any time and issue, override the Screen Commander, and issue a direct order, but it is bad naval ethics to do it.

(Trial M. 618)

Q. Now—

A. May I finish, because we haven't developed the Group Commander. The Group Commander may be, or may not be the same man. The Group Commander, once he has issued his Operation Order, assuming he is a different man, sits in his cabin or stays on the bridge, watches what goes on as far as the individual formation with which he is connected, but he may have other forces in this formation. He may have a unit doing this, or another unit doing that under the same group, and when they bear the same relationship to him that these other commanders do, while the fact that they are out of sight means nothing to him.

Q. Now would you say that these officers have a responsibility toward the unit that they command?

A. When you give a man command, an authority over a ship or man in the Navy when he accepts that command, he also accepts a double responsibility, a responsibility to use the forces entrusted to him to the best of his ability to carry out the orders received from higher authority, and he has the responsibility which is to safeguard, to keep informed and to bear in mind at all times the forces over whom he has taken command.

Q. Now, Commodore, in this particular instance the RUCHAMKIN was one of the vessels assigned to the Task Group Commander and proceeded independently of the

formation, which [619] we have sketched on the board, from the Hampton Roads area to Camp Pendleton, where it was to undergo some beach reconnaissance mission or pick up some people from the beach and then proceed out to sea and join the formation.

Now up until the time that she had reported to the Screen Commander under whose control or guidance would that vessel be?

A. Under the Commanding Officer, immediate Tactical Command.

Q. Now after she reported to the Screen Commander, which in this particular instance she did by phoning the Screen Commander on the radio telephone, and saying that she was ready to join the formation and she was then ordered to proceed to a position from which to take her station, she was told twice to expedite in doing that; now under whose control or guidance would that vessel be at that point or after that report?

A. The Screen Commander.

Q. Now would it make any difference to your answer, does it change your answer to know the fact that the Screen Commander ordered her not to take a specific station but to go to a point, an undesignated point from which to take her station?

A. None whatever.

With respect to the responsibility and authority of these naval officers the Navy Regulations provide as follows:

"0332. *Responsibility and Authority of a Commander.*

1. A commander shall be responsible for the satisfactory accomplishment of the mission and duties assigned to his command. His authority shall be commensurate with his responsibilities, subject to law and these regulations.

He shall exercise authority normally through his immediate subordinate commanders, but may, should he deem it necessary, communicate directly with any of his subordinates.

2. Subject to orders of higher authority, a commander shall issue such regulations and instructions as may be necessary for the proper administration and operation of his command.

3. A commander shall hold the same relation to his flagship, or to a station in which his headquarters may be located, in regard to its internal administration and discipline, as to any other ship or station of his command."

"0310. *Authority and Responsibilities of Officers of a Staff.*

1. The chief of staff, or chief staff officer, under the commander, shall be responsible for supervising and coordinating the work of the staff, and shall be kept informed of all matters pertaining to that work. All persons attached to the staff, except a deputy responsible directly to the commander, shall be subordinate to the chief of staff or chief staff officer while he is in the execution of the duties of his office.

2. The officers of a staff shall be responsible for the performance of those duties assigned to them by the commander and shall advise him on all matters pertaining thereto. In the performance of their duties, they shall have no command authority of their own with respect to the remainder of the command, but shall at all times, in carrying out such duties, act for and in the name of the commander."

"0312. *Staff Embarked.*

In matters of general discipline, the staff of a commander embarked and all enlisted persons serving with

the staff shall be subject to the internal regulations and routine of the ship. They shall be assigned regular stations for battle and emergencies. Enlisted persons serving with the staff shall be assigned to the ship for administration and discipline, except in the case of staffs embarked for passage only, and provided in that case that an organization exists and is authorized to act for such purposes."

"*0611. Readiness and Safety of Forces.*

1. The senior officer present shall prescribe the conditions of readiness of all the forces present and under his authority.

2. The senior officer present is responsible for the safety of the units in company, and shall, at sea, direct the course to be steered and the disposition to be employed.

3. To the extent which the situation demands, the senior officer present shall be prepared for action, and shall guard against surprise attack. With the means at his disposal, he shall put into effect such measures as are necessary to minimize the possibility of the undetected approach of hostile, air, surface, or subsurface forces, and shall take all action possible to destroy such hostile forces prior to their reaching attack positions."

"*0751. Safe Navigation.*

1. The commanding officer is responsible for the safe navigation of his ship or aircraft, except as prescribed otherwise in these regulations for ships at a naval shipyard or station, in drydock, or in the Panama Canal. In time of war, or during exercises simulating war, the provisions of this article pertaining to the use of lights and electronic devices may be modified by competent authority.

2. The commanding officer of a ship and, as appropriate, of an aircraft, shall:

(a) Preserve all information that he receives or is able to procure concerning safe navigation.

(b) Insure that the required charts, hydrographic and aeronautic publications in effect are on board and corrected to date.

(c) Make every effort to obtain from reliable sources, foreign or otherwise, all information that will aid him in any case of doubt about safe navigation over routes he proposes to take or ports he intends to visit.

(d) Keep himself informed of the error of all compasses, and other devices available as aids to navigation.

(e) Immediately before leaving, and as soon as practicable after entering port, require the navigating officer to ascertain the draft of the ship, forward and aft, and enter it in the log.

(f) Have the anchors ready for letting go when the proximity of land or the depth of water is such that there is danger of grounding.

(g) Insure that lookouts are proficient in their duties, and are stationed as necessary in accordance with the best practice of seamen, having in mind any special conditions, the results to be accomplished, and the physical limitations of personnel. When underway during low visibility, or when approaching or traversing congested traffic lanes or areas, at least one lookout shall be stationed in the bow as far forward and as near the water as is feasible.

(h) Require that available electronic and other devices appropriate as aids to safe navigation be employed during periods of low visibility and at other times when needed.

(i) Insure that efficient devices for fixing the ship's position and for ascertaining the depth of water are employed when underway on soundings, entering or leaving port, or upon approaching an anchorage, shoal, or rock, whether or not a pilot is on board. If circumstances warrant, he shall reduce speed to the extent necessary to permit these devices to be operated efficiently and accurately.

(j) Observe every precaution prescribed by law to prevent collisions and other accidents on the high seas, inland waters, or in the air.

(k) When underway in restricted waters or close inshore, and unless unusual circumstances prevent, steam at a speed which will not endanger other ships or craft, or property close to the shore.

(l) Take special care that the lights required by law to prevent collisions at sea, in port, or in the air are kept in order and burning in all weathers from sunset to sunrise, and require that means for promptly relighting or replacing such lights are available.

(m) Keep a night order book, which shall be preserved as part of the ship's official records, in which shall be entered the commanding officer's orders with respect to courses, any special precautions concerning the speed and navigation of the ship, and all other orders for the night for the officer of the deck.

(n) When under the tactical command of a senior, promptly give notice to such senior and to the ship or aircraft endangered if he finds that the directed course is leading his ship or aircraft, or any other ship or aircraft, into danger.

(o) When under the tactical command of a senior, perform no independent evolution without orders from such senior, except as necessary to avoid collision or imminent danger."

"*1345. Command of a Task Force.*

A commander in chief and, when empowered by the Secretary of the Navy, any other naval commander, may detail in command of a task force, or other task command, any eligible officer under his command whom he desires, and any officer so detailed shall have the same authority

and receive the same obedience from all officers attached thereto, that he would be entitled to receive if his commission were the highest or the oldest. All orders issued under the authority of this article shall continue in effect after the death or disability of the officer issuing them until revoked by his successor in command or by higher authority. The powers delegated to a commander by this article are not conferred on any other officer by virtue of the fact that he is senior officer present."

NAVAL TERMS DICTIONARY — NOEL 1952

Definition of flagship

"the ship from which an admiral or other unit commander flies his flag and from which he exercises command."